

## **B. Recommendations Relating to the Immigration Treatment of Citizenship Relinquishment and Residency Termination**

### **1. Conform present-law immigration provision to tax rules**

**(a) If the alternative tax regime recommendations set forth in Part A, above, are adopted, the Joint Committee staff recommends that the immigration law be modified to provide that a former citizen or former long-term resident who is subject to the alternative tax regime be barred from reentry into the United States unless such individual provides evidence of full compliance with his or her obligations under the alternative tax regime, as determined by the IRS.**

**(b) If the alternative tax regime recommendations are not adopted, the Joint Committee staff recommends that the immigration law be modified to provide that a former citizen or former long-term resident who is subject to the present-law alternative tax regime, as determined by the IRS, be barred from reentry into the United States.**

### **Background**

Under the immigration law, any former citizen of the United States who renounces U.S. citizenship and who is determined by the Attorney General to have done so for the purpose of avoiding U.S. tax is barred from reentering the United States.<sup>596</sup> The Attorney General is charged with the sole responsibility for making these determinations, based on information received from the Department of State and the IRS (subject to the disclosure restrictions imposed by section 6103).<sup>597</sup>

The special tax rules and the special immigration rules applicable to individuals who relinquish citizenship or terminate residency differ in three fundamental respects. First, the present-law immigration provision applies only to former citizens who relinquish citizenship for tax-motivated reasons. Former long-term residents are not subject to the immigration provision, even though such individuals are covered by the present-law alternative tax regime. Second, the present-law immigration provision applies only if tax avoidance is found to be the principal purpose for relinquishing citizenship, whereas the present-law tax provision applies if tax avoidance is found to be a principal purpose for relinquishing citizenship (or terminating residency). Third, under the present-law immigration provision, the Attorney General (as opposed to the IRS) makes the determination of whether a former citizen's relinquishment of

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<sup>596</sup> See also, the discussion in 2., below, concerning waivers of grounds of inadmissibility.

<sup>597</sup> As discussed in Part V, above, the Homeland Security Act transfers the functions of the INS and the immigration functions of both the Attorney General and the Secretary of State to the Department of Homeland Security. For clarity of exposition, the discussion in this Part XI continues to refer to the separate agency functions, since the mechanical aspects of these transfers of responsibility remain to be resolved.

citizenship was tax-motivated and is not given any objective standards to guide this determination.

### **Joint Committee staff recommendation**

#### **In general**

The Joint Committee staff believes that the present-law tax and immigration provisions should be coordinated in terms of both coverage and administration. Accordingly, the substantive standards governing whether a former citizen or former long-term resident is eligible for reentry into the United States should be tied to the tax law provisions, and the IRS should be primarily responsible for applying these standards, due to its privileged access to the necessary taxpayer information.

#### **Coordination with the Joint Committee staff's tax recommendations**

If the alternative tax regime recommendations described in Part A, above, are adopted, the Joint Committee staff recommends that former citizens and former long-term residents who provide evidence of full compliance with U.S. Federal tax obligations under the alternative tax regime be allowed to reenter the United States. However, under the third Joint Committee staff recommendation in Part A, above, if such an individual remains in the United States for more than 30 days in a calendar year, he or she would be treated as a U.S. resident for Federal tax purposes for that year. The Joint Committee staff believes that this is a sufficient sanction for maintaining significant ties to the United States following citizenship relinquishment or residency termination. Under this approach, the present-law immigration provision would be amended by removing the requirement that the relinquishment of citizenship be tax-motivated, and instead would deny a former citizen or former long-term resident reentry into the United States if the individual fails to establish to the IRS's satisfaction full compliance with all obligations under the alternative tax regime.<sup>598</sup>

In satisfying the standard of full compliance, former citizens and former long-term residents would be required to establish that they have provided all necessary tax documentation, including the filing of all required returns and schedules, and have paid any U.S. Federal tax due. The IRS would review all relevant information collected to determine those individuals who are subject to the alternative tax regime and are not compliant with their U.S. Federal tax obligations. The IRS would forward those names and other identifying information to the Department of State (including U.S. consular offices). Upon a later finding of full compliance with all U.S. Federal tax obligations under the alternative tax regime, such individuals would be permitted to reenter under immigration law.

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<sup>598</sup> If an individual is treated as a U.S. resident under the 30-day rule recommended by the Joint Committee staff, then, in later years, the necessary compliance with U.S. Federal tax obligations for purposes of the immigration rule would include compliance with the individual's tax obligations as a U.S. resident for any year in which the 30-day rule applies.

### Coordination with the present-law tax provisions

If the alternative tax regime recommendations described in Part A, above, are not adopted, the Joint Committee staff recommends that former citizens and former long-term residents subject to the present-law alternative tax regime be subject to the immigration provision denying certain individuals reentry into the United States. Thus, the alternative tax regime and related immigration provision would have uniform applicability and would apply with the same force to both former citizens and former long-term residents.

## **2. Eliminate discretionary exception from immigration provision**

**The Joint Committee staff recommends eliminating the discretion of the Attorney General to waive substantive grounds of inadmissibility with respect to former citizens and former long-term residents who would otherwise be inadmissible under the entry ban relating to tax avoidance.**

### **Background**

Under the present-law immigration rules, former U.S. citizens who renounce their citizenship for purposes of tax avoidance, as determined by the Attorney General, are inadmissible to the United States.<sup>599</sup> Under the immigration law, no waiver of inadmissibility is available for persons seeking immigrant status, but nonimmigrants can seek a waiver of inadmissibility.

If a nonimmigrant visa, such as a tourist visa, is sought, the Attorney General may waive grounds of substantive inadmissibility, except on certain security and related grounds. The waiver is purely discretionary and the law provides no criteria for the exercise of this discretion. In practice, the Government considers the risk of harm in admitting the applicant, the seriousness of the acts that cause inadmissibility, and the importance of the applicant's reason for seeking entry, which need not be compelling. Thus, even if a person is found to have relinquished citizenship for purposes of tax avoidance, such person may still be permitted to enter the United States if the Attorney General issues a waiver.

### **Joint Committee staff recommendation**

The Joint Committee staff recommends that no waivers of substantive inadmissibility be available for former citizens and former long-term residents who are inadmissible by reason of the special immigration rules relating to tax avoidance. The Joint Committee staff believes that this proposal would bolster the deterrent effect of the special immigration rules.

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<sup>599</sup> 8 U.S.C. sec. 1182(a)(10)(E).

### **3. Promote interagency information sharing**

**The Joint Committee staff recommends that the INS's databases be made accessible to the IRS and other appropriate Federal agencies for purposes of administering the entry ban relating to tax avoidance. These databases also should be modified to include social security numbers, if available, and in the case of non-criminal inadmissibility waivers, the type of waiver granted.**

#### **Background**

One difficulty in administering the present-law immigration provision is that INS databases are not adequately interconnected with the databases of the IRS, the Department of Justice, the Department of State, and the Department of Treasury. Indeed, the majority of the information in the INS databases is not accessible to the other agencies. A related problem is that, unlike IRS databases, the INS databases are organized by alien registration number, and thus often do not contain social security numbers. Also, INS databases do not include the type of waiver granted in cases of non-criminal admissibility waivers.

#### **Joint Committee staff recommendation**

The Joint Committee staff recommends that the INS's databases be modified to facilitate and improve the sharing of information among the INS, the IRS, the Department of Justice, the Department of State, and the Department of Treasury. These databases should include social security numbers, if available, and in the case of non-criminal inadmissibility waivers, the type of waiver granted. The INS and Department of State databases should be available to the IRS for the purpose of monitoring former citizens and former long-term residents both at the port of entry and as they request visas. This proposal would enable the IRS to work in tandem with the INS and the Department of State to identify persons who are inadmissible under the immigration provision, and thereby enforce such provision.

### **4. Amend Code section 6103**

**The Joint Committee staff recommends that Code section 6103 be modified to enable the IRS to share with the appropriate agencies the minimum tax information necessary to implement the immigration provision.**

#### **Background**

To effectively administer the present-law immigration provision, as well as the Joint Committee staff recommendations, the Department of State, the INS, and the IRS need to work together to identify and track individuals who are subject to the alternative tax regime. Under present law, this effort requires the Department of State and the INS to have access to certain tax return information from the IRS. Under present law, the IRS is prohibited from disclosing tax returns or return information unless specifically authorized. No explicit exception to the disclosure rules applies to facilitate the implementation of the present-law immigration provision. As a result, the present-law immigration provision cannot be fully implemented.

### **Joint Committee staff recommendation**

The Joint Committee staff recommends that the provisions relating to the confidentiality of tax returns and return information be modified to enable the IRS to share with the appropriate agencies the minimum information necessary to implement the immigration provision.<sup>600</sup> The information would be disclosed pursuant to Treasury regulations.<sup>601</sup>

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<sup>600</sup> If primary responsibility for determining excludability under the special immigration provision were transferred to the IRS (in accordance with the first Joint Committee staff immigration recommendation above), then less return information would need to be shared than would be necessary if another agency remained primarily responsible for such determinations.

<sup>601</sup> Recordkeeping requirements, safeguards, and civil and criminal penalties for unauthorized disclosure or inspection would apply to return information disclosed under this provision. Sec. 6103(p).